

**W**hile Kentucky's 13.3 percent falls close to the national percentage of 13 percent for population age 65 or older, several counties in the commonwealth significantly exceed the average. The top five counties are:

- Lyon County – 21 percent
- Hickman County – 20.8 percent
- Marshall County – 19.3 percent
- Cumberland County – 19.1 percent
- Trigg County – 19 percent ■

reasonable cause to suspect that an adult has suffered abuse, neglect or exploitation must report or cause reports to be made to the Cabinet for Health and Family Services. Such a report should then go to the DCBS, the agency responsible for protecting vulnerable adults. After screening a report, DCBS launches an investigation, usually conducted by social workers.

DCBS must notify MFCU of cases involving patient abuse, neglect or exploitation immediately upon obtaining information that indicates a violation of KRS 209.990(2) or another criminal offense. If a complaint appears criminal on its face, local DCBS workers contact their local police department, sheriff's office or Kentucky State Police post to collect evidence. DCBS also forwards the complaint to MFCU.

Early notification comes from a DCBS DPP-115 Confidential Abuse-Neglect, Dependency or Exploitation Reporting Form, which describes the allegation. DCBS substantiates or does not substantiate an allegation in a Notice of Findings. Upon approval by a supervisor, an even more detailed Continued Quality Assessment is distributed to appropriate agencies, including MFCU. In the CQA, the DCBS workers document all interviews they conducted, information they gathered or steps they took during the investigation. They also document the dates, times, locations, full names and relationships of all people interviewed in the CQA.

If a complaint is referred to the OIG, a team of nurses within that office examines the complaint and conducts an investigation. As a result of that review, OIG issues a Statement of Deficiencies detailing the problems with the facility through a survey. A Statement of Deficiencies requires that the facility respond with a Plan of Correction, which the OIG survey team must

approve. A Statement of Deficiencies can be based on any issue covered by regulation regarding a facility. If OIG determines that the situation poses an imminent danger to a resident and creates a substantial risk of death or serious mental or physical harm, it issues a Type A Citation under 900 KAR 2:040.

Upon receipt of a substantiated allegation, a Type A Citation or a direct complaint, MFCU opens a new complaint, reviews the information to determine if it needs more information. An investigator within MFCU is assigned to the case when the preliminary review leads to a full investigation. The nurse consultant within MFCU also reviews cases of abuse or neglect.

If after an investigation MFCU believes a case may be criminal, it submits the case to the local prosecutor, who has jurisdiction to prosecute such cases under KRS 209.180. In certain circumstances, such as when a conflict of interest or a lack of resources exists, the local prosecutor may request that MFCU prosecute under KRS 15.190, which occurred in the Richmond case.

Federal regulation makes MFCU responsible for reviewing complaints alleging abuse or neglect of patients in Medicaid-funded facilities. In carrying out its responsibility, MFCU is a health oversight agency under 45 CRR 164.501. Under 45 CFR 164.512(d), MFCU may obtain protected health information during civil or criminal investigations or actions, without the consent of the individual resident or patient. A facility may also disclose protected health information for a law enforcement purpose to a law enforcement official under circumstances under 45 CFR 164.512(f), which MFCU uses at times to obtain protected health information by administrative subpoena, or a civil or an authorized investigative demand letter.

Under Section 1128(b)(12) of the Social Security Act, a facility's refusal to grant immediate access to a review of documents like patient records may result in the facility's exclusion from participation in Medicare, Medicaid and other federally-funded health care programs. The exclusion is for the length of time that access is denied, plus up to 90 additional days.

Even with statutory and regulatory authority to investigate, proving a criminal case can be difficult. Federal law, including additions to the Social Security Act by the Patient Protection and Affordable Care Act of 2010, requires facilities to immediately report suspicion of abuse or neglect to law enforcement agencies. But Adult Protective Services is generally the first agency to arrive. A criminal investigation usually comes after an internal investigation and regulatory investigation. Valuable time passes. >>

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